

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

<p>DEBRA AVRIN and LYNN MURPHY,</p>	}	<p>Case No.: SACV 23-02278-CJC (ADSx)</p>
<p>Plaintiff,</p>	}	<p>ORDER TO SHOW CAUSE WHY THIS CASE SHOULD NOT BE TRANSFERRED TO THE DISTRICT OF COLORADO OR THE DISTRICT OF NEW JERSEY</p>
<p>v.</p>	}	
<p>MENTOR WORLDWIDE LLC,</p>	}	
<p>Defendant.</p>	}	

In this case, Plaintiffs Debra Avrin and her husband Lynn Murphy allege Defendant Mentor Worldwide LLC’s MemoryGel textured breast implants caused Avrin to develop Breast Implant Associated Anaplastic Large Cell Lymphoma (“BIA-ALCL”). (Dkts. 1-2-1-3 [Complaint, hereinafter “Compl.”].) Plaintiffs allege Defendant concealed the risk of BIA-ALCL associated with its textured breast implants, and assert claims for (1) strict product liability – manufacturing defect, (2) breach of implied warranty, (3) strict liability – failure to warn, (4) negligence *per se*, and (5) loss of consortium. (*Id.* ¶¶ 43, 218–290.)

1 Plaintiffs are Colorado residents. (Compl. ¶¶ 6–7.) Defendant is a limited liability
2 company organized and existing under Delaware law. (Dkt. 1 ¶ 13.) A limited liability
3 company “is a citizen of every state of which its owners/members are citizens.” *Johnson*
4 *v. Columbia Props Anchorage, L.P.*, 437 F.3d 894, 899 (9th Cir. 2006). Defendant’s sole
5 member, Ethicon, Inc., is a corporation organized and existing under the laws of the State
6 of New Jersey with its principal place of business in New Jersey. (Dkt. 1 ¶ 13.)

7
8 In general, venue is proper in any district where “any defendant resides, if all
9 defendants are residents of the State in which the district is located” or where “a
10 substantial part of the events or omissions giving rise to the claim occurred, or a
11 substantial part of property that is the subject of the action is situated.” 28 U.S.C. § 1391
12 (b)(1)–(2). Plaintiffs filed this case in California on the apparently mistaken belief that
13 Defendant’s principal place of business and headquarters are in California. (Compl. ¶¶ 8,
14 17, 20.) But in fact, it does not appear that California has any connection to the parties or
15 this case at all.

16
17 When a party files a case in an improper venue, the court “shall dismiss” the
18 action, “or if it be in the interest of justice, transfer such case to any district or division in
19 which it could have been brought.” 28 U.S.C. § 1406(a). In addition, “[f]or the
20 convenience of parties and witnesses, in the interest of justice, a district court may
21 transfer any civil action to any other district or division where it might have been
22 brought.” 28 U.S.C. § 1404(a). Courts may transfer cases under Section 1404(a)
23 *sua sponte*, “so long as the parties are first given the opportunity to present their views on
24 the issue.” *Costlow v. Weeks*, 790 F.2d 1486, 1488 (9th Cir. 1986). To determine
25 whether convenience and the interests of justice favor transfer, courts consider factors
26 including (1) the location where relevant agreements were negotiated and executed,
27 (2) the state most familiar with the governing law, (3) the plaintiff’s choice of forum,
28 (4) the parties’ contacts with the forum, (5) the contacts relating to the plaintiff’s claim in

1 the chosen forum, (6) the litigation cost differences in the two forums, (7) the availability
 2 of compulsory process to compel attendance of unwilling non-party witnesses, and
 3 (8) the ease of access to sources of proof. *Jones v. GNC Franchising, Inc.*, 211 F.3d 495,
 4 498–99 (9th Cir. 2000). Courts have broad discretion to decide motions to transfer with
 5 individualized, case-by-case consideration, *Jones*, 211 F.3d at 498, and must undertake a
 6 “flexible and individualized analysis” of relevant factors, *Stewart Org., Inc. v. Ricoh*
 7 *Corp.*, 487 U.S. 22, 29 (1988).

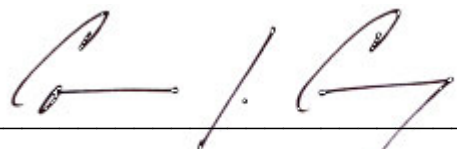
8
 9 It appears to the Court that venue is not proper in this district and that the interests
 10 of justice require transfer of this case to either the District of Colorado or the District of
 11 New Jersey. *See Costlow v. Weeks*, 790 F.2d 1486, 1488 (9th Cir. 1986) (affirming
 12 dismissal after district court *sua sponte* raised issue of improper venue). The first factor,
 13 the location where relevant agreements were negotiated and executed, does not apply
 14 here because there are no agreements relevant to the parties’ dispute. The second and
 15 third factors, the state most familiar with the governing law and the plaintiff’s choice of
 16 forum, are neutral because Plaintiffs appear to have chosen to sue in California and base
 17 their claims on California law on the mistaken belief that Defendant is headquartered in
 18 California. Moreover, courts give a plaintiff’s choice of forum “considerably less
 19 weight” when, as here, the plaintiff does not reside in the selected forum and the forum
 20 lacks any significant contact with the defendant’s challenged conduct. *See Vu v. Ortho-*
 21 *McNeil Pharma., Inc.*, 602 F. Supp. 2d 1151, 1156 (N.D. Cal. Mar. 9, 2009); *Arcona, Inc.*
 22 *v. Farmacy Beauty, LLC*, 2018 WL 1441155, at *8 (C.D. Cal. Mar. 22, 2018) (explaining
 23 that it is “particularly true” that a plaintiff’s choice of venue is accorded deference “when
 24 the plaintiff chooses to litigate in their home forum”); *Sweet-Reddy v. Vons Companies*
 25 *Inc.*, 2007 WL 841792, at *2 (N.D. Cal. Mar. 20, 2007) (“Additionally, if the plaintiff’s
 26 forum lacks any significant contact with the activities alleged in the complaint, the
 27 plaintiff’s choice of forum will be given considerably less weight.”); *Signal IP, Inc. v.*
 28 *Ford Motor Co.*, 2014 WL 4783537, at *3 (C.D. Cal. Sept. 25, 2014) (explaining that

1 deference to the plaintiff's choice of forum may be lessened when "the chosen forum
2 lacks a significant connection to the activities alleged in the complaint").

3
4 The fourth and fifth factors, the parties' contacts with the forum and the contacts
5 relating to the plaintiff's claim in the chosen forum, weigh strongly in favor of transfer,
6 as the parties appear to have no contacts with California relevant to this dispute. The
7 sixth factor is neutral, as there are not likely significant cost differences between
8 litigating a case in California versus in Colorado or New Jersey. The seventh and eighth
9 factors, the availability of compulsory process and the ease of access to sources of proof,
10 also weigh heavily in favor of transfer, as there appear to be no relevant witnesses or
11 sources of proof located in California. "Finally, given that the action has no real relation
12 to this forum, it would be unfair to impose jury duty on the citizens here." *Megtech, Inc.*
13 *v. Edible Arrangements, LLC*, 2010 WL 11512215, at *5 (C.D. Cal. Jan. 11, 2010).

14
15 Accordingly, the Court **ORDERS** the parties to show cause in writing by
16 **February 21, 2024** why this case should not be transferred. In their briefing, the parties
17 should also address the appropriate district for transfer of the case. The February 12,
18 2024 hearing on Defendant's motion to dismiss Plaintiffs' Complaint (Dkt. 10) is
19 **VACATED**. The Court will recalendar the hearing on Defendant's motion to dismiss if
20 the case is not transferred.

21
22 DATED: February 7, 2024

23
24 
25 CORMAC J. CARNEY
26 UNITED STATES DISTRICT JUDGE
27
28